

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA,

v.

CHRISTOPHER WARREN LAPP,

Defendant.

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Case No. 1:19-cr-99-TSE

UNOPPOSED MOTION TO ABATE AND DISMISS

COMES NOW the Defendant, Christopher W. Lapp, by counsel, Joseph T. Flood, and moves this honorable Court to enter an order dismissing the indictment and these proceedings *ab initio* because the defendant has died. In support of this motion, Mr. Lapp asserts the following:

1. On March 27, 2019, a grand jury sitting in the Eastern District of Virginia indicted Lapp for four crimes. Count one charged Lapp with bank robbery, in violation of 18 U.S.C. § 2113(a) & (b), count two charged him with carjacking, in violation of 18 U.S.C. § 2119, and counts three and four charged him with using a firearm in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A). (Doc. 14)

2. On January 24, 2020, this Court found Lapp incompetent. On February 10, 2020, this Court ordered Lapp committed to the custody of the Attorney General and the Bureau of Prison for psychiatric and psychological assessment to determine whether his competence could be restored. For the following year, Lapp received mental health treatment and restorative services at FMC Butner, which included receiving psychotropic medication to treat his serious mental illness and restore his competence.

3. On February 16, 2021, Allyson Wood, Ph.D., issued a report in which she determined Lapp's competence was restored.

4. On March 5, 2021, this Court found Lapp competent and set the trial date for September 14, 2021. (Doc. 136, at 4-5; Doc. 137, at 1) In its scheduling order the Court directed Lapp to be returned to FMC Butner, pending trial, to ensure he receives the appropriate medical care. (Doc. 137, at 2)

5. On or around March 5, 2021, staff at the Alexandria Detention Center discontinued Lapp's medication after a staff clinician opined Lapp was not mentally ill.

6. On April 16, 2021, Lapp pleaded guilty to Counts one, two, and three of the indictment, pursuant to a plea agreement with the Government, and this Court dismissed Count four upon the Government's motion. (Doc. 138) During the plea hearing, undersigned counsel advised the Court that while he believed Lapp was competent to enter a guilty plea, he was nonetheless concerned the Detention Center had discontinued Lapp's medication. During the hearing the Court ordered Lapp returned to Butner to continue treatment. (Doc. 143)

7. On April 23, 2021, undersigned counsel provided notice to the Court that Lapp had not been returned to Butner, as the Court had ordered. (Doc. 144)

8. On or about May 18, 2021, Lapp was discovered unconscious and unresponsive in his cell. He was transferred to a local hospital and later died.

9. Death pending an appeal of a criminal conviction abates not only the appeal but all proceedings in the prosecution *ab initio*. *Durham v. United States*, 401 U.S. 481, 483 (1971); *United States v. Dudley*, 739 F. 2d 175, 176 (4th Cir. 1984). The long-held principle supporting this rule is that "all private criminal injuries or wrongs, as well as all public crimes, are buried with the offender." *United States v. Daniels*, 47 U.S. (6 How.) 11, 13 (1848). Because Lapp's death abates this prosecution *ab initio*, *United States v. Oberlin*, 718 F. 2d 894, 896 (9th Cir. 1983), this Court should dismiss and abate the indictment and all proceedings in this matter.

10. Undersigned counsel has consulted with the attorney representing the United States and she advises the Government has no objection to this motion.

Conclusion

WHEREFORE, for these reasons, this Court should enter an order dismissing and abating all proceedings in this matter including, but not limited to, the indictments issues on [DATE].

Respectfully submitted,
Christopher Warren Lapp
By Counsel

/s/ Joseph T. Flood
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing notice was filed by CM/ECF on this the 19th day of May, 2021, which will then send a notification to counsel of record.

/s/ Joseph T. Flood

Joseph T. Flood, VSB #71716

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